

## **CIVIL SERVICE COMMISSION MINUTES**

**January 20, 1999**

A regular meeting of the Civil Service Commission was held at 2:30 p.m., in Room 358 at the County Administration Building, 1600 Pacific Highway, San Diego, California.

Present were:

Gloria Valencia-Cothran, President  
Roy Dixon, Vice-President  
Mary Gwen Brummitt  
Sigrid Pate

Absent were:

Gordon Austin

Comprising a quorum of the Commission

Larry Cook, Executive Officer  
Ralph Shadwell, Deputy County Counsel  
Joy Kutzke, Reporting

**CIVIL SERVICE COMMISSION MINUTES**  
**January 20, 1999**

1:30 p.m.      CLOSED SESSION: Discussion of Personnel Matters and Pending Litigation

2:30 p.m.      OPEN SESSION: Room 358, 1600 Pacific Highway,  
San Diego, California 92101

PRE-AGENDA CONFERENCE

<u>Discussion Items</u>	<u>Continued</u>	<u>Referred</u>	<u>Withdrawn</u>
8,9,10,11,12,13, 18	12,13		

COMMENTS Motion by Dixon to approve all items not held for discussion; seconded by Brummitt. Carried.

**CLOSED SESSION AGENDA**  
**County Administration Center, Room 458**  
**(Notice pursuant to Government Code Sec. 54954.2)**  
**Members of the Public may be present at this**  
**location to hear the announcement of the**  
**Closed Session Agenda**

- a.    Ralph Peters, Deputy County Counsel: Discussion regarding the payment of interest on back pay awards.
- b.    Commissioner Austin: Everett Bobbitt, Esq., on behalf of **Dawn Anderson** appealing an Order of Termination from the Sheriff's Department.
- c.    Commissioner Dixon: Complaint of **Jenean McBrearty** alleging age and political affiliation discrimination by the Probation Department.
- d.    Commissioner Dixon: Jerri Abernathy, Esq. on behalf of **William Joseph Cox** alleging disability and racial discrimination by the Probation Department.

**REGULAR AGENDA**

NOTE: Five total minutes will be allocated for input on Agenda Items unless additional time is requested at the outset and it is approved by the President of the Commission.

## ELECTIONS

1. Elections of President and Vice-President of the Commission for 1999.

**Motion by Brummitt to nominate Gloria Valencia-Cothran as President and Roy Dixon as Vice-President for 1999; seconded by Pate. Carried.**

## MINUTES

2. Approval of the Minutes of the regular meeting of December 16, 1998.

**Approved.**

## CONFIRMATION OF ASSIGNMENTS

3. Commissioner Brummitt as hearing officer in the appeal of **Ronald Portz** appealing an Order of Suspension from the Office of the Marshal.

**Confirmed.**

4. Commissioner Valencia-Cothran as hearing officer in the appeal of **Stephen J. Tillotson** appealing an Order of Termination from the Sheriff's Department.

**Confirmed.**

5. Commissioner Pate as hearing officer in the appeal of **Sue Riley** appealing an Order of Termination from the Sheriff's Department.

**Confirmed.**

6. Commissioner Dixon as hearing officer in the appeal of **Jacqueline Langston** appealing an Order of Removal from the Health and Human Services Agency.

**Confirmed.**

## STIPULATED AGREEMENT

7. Commissioner Valencia-Cothran: James Gattey, Esq. on behalf of **Manuel Perez** appealing an Order of Suspension from the Sheriff's Department.

RECOMMENDATION: Approve agreement.

**Motion by Valencia-Cothran to approve stipulated agreement; seconded by Pate. Carried.**

## **DISCIPLINARY FINDINGS**

8. Commissioner Austin: Everett Bobbitt, Esq., on behalf of **Dawn Anderson** appealing an Order of Termination from the Sheriff's Department.

### **FINDINGS AND RECOMMENDATIONS:**

Employee was charged with Cause I -- inefficiency (collision with patrol vehicle); Cause II - dishonesty; Cause III - negligence resulting in damage to public property; Cause IV - failure of good behavior; and Cause V - acts which are incompatible with and/or inimical to the public service. Employee has been employed by the Sheriff's Department for six years as a Deputy Sheriff. The hearing revealed undisputed testimony that the primary cause for termination was the charge that Employee was untruthful; there was no dispute that a vehicular collision occurred resulting in damage to the patrol vehicle driven by Employee. This hearing officer concludes that while Employee is to be faulted for delaying an account of the damages, the Department is at least equally at fault for its belated and incomplete investigations of the incident. There was indecisiveness and uncertainty within the Department's investigations. An unbiased Skelly Officer determined there was insufficient evidence of Employee's untruthfulness. There was no apparent motive for Employee to lie about the location of the incident. The charges described in Causes I, II and IV were not proven to be true. The charges in Cause III were proven to be true. It is therefore, recommended that the Order of Termination be amended to a suspension of five (5) calendar days; that back pay, benefits and interest be awarded from the date of termination to the date of Employee's return to work, minus five (5) calendar days of suspension and any compensation for outside employment during this period of time; and that the proposed decision shall become effective upon the date of approval by the Civil Service Commission.

**Motion by Brummitt to approve Findings and Recommendations; seconded by Dixon. Carried.**

## **DISCRIMINATION MATTERS**

### **Findings**

9. Commissioner Dixon: Jerri Abernathy, Esq. on behalf of **William Joseph Cox** alleging disability and racial discrimination by the Probation Department.

### **FINDINGS AND RECOMMENDATIONS:**

Jerri Abernathy, Esq. addressed the Commission on behalf of her client William Joseph Cox. She presented issues relating to the process experienced by Mr. Cox while competing for a position with the Probation Department. Ms. Abernathy addressed concerns pertaining to the lack of cooperation from the Department during the investigation as well as the length of time it took to conclude the

investigation. Larry Cook, Executive Officer, informed the Commission that this case was one that was in the midst of investigation by EOMO just prior to its abolishment. OIA inherited the case and the transitioning was a factor in the length of time it took to conclude the investigation. Merrillyn Carpenter added that the Department had concerns regarding legal implications in divulging confidential background information to OIA and had numerous conversations with County Counsel in order to resolve the Department's concerns.

The complaint was referred to the Office of Internal Affairs for investigation and report back. The report of OIA has been received and reviewed by this Investigating Officer, who concurs with the findings that complainant failed to establish allegations of discrimination based on disability and/or race; and probable cause that a violation of discrimination laws occurred was not established. It is therefore, recommended that: (1) William Joseph Cox's complaint be denied; and (2) the Commission approve and file this report with a findings of no probable cause that Complainant has been discriminated against on any basis protected by law.

**Motion by Dixon to approve Findings and Recommendations;  
seconded by Valencia-Cothran. Carried.**

10. Commissioner Dixon: **Jenean McBrearty** alleging age and political affiliation discrimination by the Probation Department (see also No. 11 below).

#### FINDINGS AND RECOMMENDATIONS:

The complaint was referred to the Office of Internal Affairs for investigation and report back. The report of OIA has been received and reviewed by this Investigating Officer, who concurs with the findings that complainant failed to establish allegations of discrimination based on age or political affiliation; and probable cause that a violation of discrimination laws occurred was not established. It is therefore, recommended that: (1) Jenean McBrearty's complaint be denied; and (2) the Commission approve and file this report with a findings of no probable cause that Complainant has been discriminated against on any basis protected by law.

**Motion by Dixon to approve Findings and Recommendations;  
seconded by Pate. Carried.**

#### SELECTION PROCESS FINDINGS/COMPLAINTS

##### Complaints

11. **Jenean McBrearty** appealing her non-selection as a Deputy Probation Officer (also 10 above).

RECOMMENDATION: Deny request.

Ms. McBrearty addressed the Commission relating her concerns as to the reasons she was given by the Probation Department for being unsuccessful with the written portion of the examination for Deputy Probation Officer. She provided the Commission with an overview of her extensive credentials. Merrilyn Carpenter responded on behalf of the Probation Department explaining the manner in which the Department rated the written portion of the process. She also informed the Commission that a new examination was recently opened and Ms. McBrearty may compete in that process if she chooses. The Department has also initiated classes to assist applicants prepare for the written exercise portion of the tests.

**Motion by Pate to approve staff recommendation; seconded by Brummitt. Carried.**

12. S.E.I.U. Local 2028 on behalf of **Robert Gould, Robert Grable and Edward Even** appealing their non-selection for promotions to Fleet Regional Manager in the Department of General Services. (Continued from CSC meeting of 12/16/98.)

RECOMMENDATION: Deny request.

Mr. Tran, S.E.I.U. Local 2028, addressed the Commission on behalf of appellants requesting a continuance to consider the possibility of expanding their request for review under other potentially pertinent Civil Service Rules. He related the chain of events in which the layoff process took place by the County, including reclassification. The Union is considering requesting a Rule XI investigation as to the manner in which the Department allegedly circumvented the layoff procedures set forth in the Civil Service Rules.

Mr. Tran expressed concerns to the Commission regarding the selection process issues before it. He imparted inconsistencies in the timeliness as well as the manner in which the interviews occurred. He asserted that applicants were provided with inadequate time to prepare for interviews. The Union alleges that the Department utilized the process to selectively promote. Mr. Gould, one of the applicants for Fleet Regional Manager, clarified that it is his belief he would have been the recipient of one of the promotions if the layoff process had not been circumvented, which created a flaw in the selection process. Mr. Even, applicant for Fleet Regional Manager, informed the Commission that he was given less than three hours to prepare for his interview and less than a week to submit his application.

Larry Cook, Executive Officer, enlightened the Commission regarding an earlier discussion he had with Mr. Tran regarding Civil Service Rules and how they pertain to the layoff process. He clarified that the Commission is being asked to consider a request for a Rule X, selection process hearing. During an earlier telephone conversation, Mr. Tran relayed thoughts to Mr. Cook regarding the possibility of the Union requesting an investigation under the provisions of Rule XI. Mr. Cook reminded Mr. Tran of the discretionary nature of Rules

XI and X. He also recalled County Counsel's past advice wherein a specific rule applies to a particular subject, the Commission should adjudicate the matter under the provisions of the particular rule. Mr. Cook recommended that the Commission continue the matter to the next Commission meeting should such a request be made.

Anthony Albers, Deputy County Counsel, on behalf of the Department of General Services, provided the Commission with his perspective of the Union's request to explore other potential avenues within its jurisdiction to review. He reminded the Commission of the comprehensive response the Department provided to appellants' complaints. Mr. Albers asserted that the Commission should rule on the issues currently before it. It is the Department's position that should the Union have other issues they choose to address, they should be provided to the Commission in writing and addressed by Commission in due course. Mr. Albers reiterated that Rule XI is a generic Rule and the Commission should not invoke it when there is a specific situation before them that applies to a specific rule. The Commission should deny the request.

**Motion by Pate to grant S.E.I.U.'s request for continuance pertaining to the selection process; seconded by Dixon. Carried.**

13. **S.E.I.U. Local 2028** on behalf of **Dave Baldwin, Thomas Watson and Gerald Tanson** appealing their non-selection for promotions to Fleet Team Leader in the Department of General Services.

RECOMMENDATION: Deny request.

**Motion by Dixon to grant S.E.I.U.'s request for continuance pertaining to the selection process; seconded by Brummitt. Carried.**

14. **Ellen Parish-Webster** appealing her non-selection as a Deputy Probation Officer by the Probation Department.

RECOMMENDATION: Deny request.

**Staff recommendation approve.**

### **Findings**

15. **John J. Buckley** appeal of removal of his name by DHR from the employment list for Corrections Deputy Sheriff.

16. **Luis Pena** appeal of removal of his name by DHR from the employment list for Corrections Deputy Sheriff.

17. **Brian Goonan** appeal of removal of his name by DHR from the employment list for Corrections Deputy Sheriff.

RECOMMENDATION: Ratify item Nos. 15 through 17. Appellants have been successful in the appellate process provided by Civil Service Rule 4.2.2.

Item Nos. 15 through 17 ratified.

## INVESTIGATIONS

18. **Gary Craven**, a former employee of the Medical Examiner's Office, requesting an investigation regarding alleged conflicting personnel records.

RECOMMENDATION: Deny request for Rule XI investigation and take actions as described in staff's report.

(Continued from CSC meeting of 12/16/98.)

Connie Zimmerman addressed the Commission on behalf of Gary Craven clarifying the location of various documents which are the source of Mr. Craven's complaint. She clarified that the Medical Examiner's Office offered Mr. Craven the opportunity to resign in lieu of termination. It was his understanding that documentation reflecting his resignation would appear in official records. A review of DHR and Medical Examiner files, revealed a conflict with that understanding. Anthony Albers, Deputy County Counsel, responded on behalf of the Medical Examiners Officer. There was extensive discussion resulting in the parties agreeing to the following actions:

1. That the Termination Action Notice (TAN) reflecting Mr. Craven's "dismissal during probation" in his personnel files in the Medical Examiner's Office and the Department of Human Resources be sealed;

2. That a memo dated July 16, 1996 from Yvonne Williams to Gary Craven referencing "Termination During Probation" (2-16-96 to 6-16-96) contained in Mr. Craven's personnel file in the Office of the Medical Examiner be sealed;

3. That a three page memo dated July 16, 1996 from Yvonne E. Williams to Gary Craven which is contained in Mr. Craven's personnel file in the Office of the Medical Examiner be amended reflecting the following deletions:

A. The reference which states: "RE: TERMINATION DURING PROBATION (2-16-96 to 6-16-96)";

B. The entire first paragraph on page 1 which starts "At this time the Medical Examiner's Office . . . with supervision is totally unacceptable"; and

C. The last paragraph on page 3, "It is for these reasons that at this time, your probation is terminated with the Medical Examiner's Office.".

4. That the Medical Examiner's Office prepare and Mr. Craven sign a new TAN backdated to 1996 reflecting his resignation. The new TAN as well as Mr. Craven's letter of resignation dated July 16, 1996 be



placed in his personnel files in the Medical Examiner's Office and DHR.

**Motion by Dixon to deny request for Rule XI investigation and accept the items agreed to and as set forth above as Nos. 1 through 4; seconded by Brummitt. Carried.**

## **OTHER MATTERS**

### **Performance Appraisals**

19. **Mary Brewer**, Protective Services Worker II in the HHSA, requesting the sealing of her performance appraisal covering the period September 1, 1997 to March 1, 1998.

RECOMMENDATION: Grant request.

**Staff recommendation approved.**

### **Extension of Temporary Appointments**

20. Health and Human Services Agency

- A. 26 Protective Services Worker I's (Lourdes Apodaca and see attached list)
- B. 1 Residential Care Worker II (Donald Barlett Jr.)
- C. 7 Social Worker I's (see attached list)
- D. 1 Aging Program Specialist II (Linda Thomas)

21. Department of Human Resources

- 1 Employee Assistance Specialist II (Marilynn Davies)

22. Department of Agriculture, Weights and Measures

- 1 Administrative Trainee (Jaime Ramirez)

23. Department of Public Works

- A. 1 Senior Clerk (Laurie Smith)
- B. 2 Road Maintenance Workers (Angelo Villafane and Larry Lennert)

24. Department of General Services

- 1 Senior Offset Equipment Operator (Richard A. Riddell)

RECOMMENDATION: Ratify item Nos. 20 through 24.

**Item Nos. 20 through 24 ratified.**

25. Public Input.

ADJOURNMENT: 4:20 p.m.

**NEXT MEETING OF THE CIVIL SERVICE COMMISSION WILL BE FEBRUARY 17, 1999.**